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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE: [REDACTED]  
EAC 99 249 53032

Office: Vermont Service Center

Date: JAN 13 2003

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

[Signature]

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition after determining that the petitioner's spouse was deported from the United States in May of 1997; therefore, the petitioner had failed to demonstrate that she was eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A), based on that relationship.

Upon review of the record of proceeding, the Associate Commissioner noted that the petitioner's permanent resident spouse was deported (removed) from the United States in May of 1997, more than two years prior to the filing of the self-petition on August 19, 1999. He further noted that the removal of the petitioner's spouse did not fall under the provisions of the amendment to the Violence Against Women Act, 2000, Pub. L. No. 106-386, signed by the President on October 28, 2000. Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien, claiming to qualify for immigration as the battered spouse or child of a resident alien, may file a petition if the alien demonstrates that he or she was a bona fide spouse of a lawful permanent resident within the past two years and whose spouse lost status within the past two years due to an incident of domestic violence. Because the petitioner's spouse was removed from the United States more than two years prior to the filing of the self-petition, and because the petitioner's spouse did not lose his status due to an incident of domestic violence, the Associate Commissioner concurred with the director's conclusion and dismissed the appeal on August 11, 2001.

On September 13, 2002, the petitioner filed this motion. She asserts that she was abused by her spouse prior to his physical removal from the United States, and that the Battered Immigrant Women Act was adopted by the U.S. Congress to provide protection to the victims, and to benefit aliens in her predicament.

Pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks

to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

The record reflects that the Associate Commissioner dismissed the appeal on August 11, 2001. The petitioner had 30 days after August 11, 2001 in which to file a motion to reopen or a motion to reconsider. This motion was received by the Service on September 13, 2002, approximately 13 months after the appeal was dismissed. The petitioner neither addressed nor submitted evidence to demonstrate that the delay was reasonable and was beyond the control of the petitioner. The motion, therefore, will be dismissed.

**ORDER:** The motion is dismissed.